IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12109 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER

Versus

SECRETARY

Appearance:

MR KM PARIKH for Petitioner No. 1

MS PARAGI K PARIKH for Petitioner No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/09/2001

ORAL JUDGEMENT

1. Rule. Mr.Vaishnav waives service of rule on behalf of the respondent.

2. At the instance of the respondent-employee, Industrial Dispute was raised which was numbered as Reference (ITN) No. 409 of 1998 (old No.1 of 1994) before the Industrial Tribunal (Gujarat) at Nadiad. The

concerned respondent is serving as a driver in the S.T. Corporation. In view of the rash and negligent driving, one small child of two years lost its life. In that view of the matter, the Department initiated departmental enquiry and the Disciplinary Authority imposed penalty of placing the employee in his original pay scale for three years. That order was challenged by the concerned workman in appeal. The Appellate Authority reduced the said penalty and, instead of three, it was reduced to placing the employee in the original pay scale for a period of two years. Even that order of penalty was challenged by raising the aforesaid Industrial Dispute.

3. The defence of the concerned workman was that the concerned child suddenly came from the left side of the road and because of that, the accident had occurred and that he was not negligent. As against that, it was the say of the Corporation that the driver of the bus should have been very careful and that, in any case, he was guilty of contributory negligence as he had not taken appropriate care to avoid the accident. If he had taken sufficient care, the accident could have been avoided. On that basis, on conclusion of the enquiry, the penalty, as stated earlier, was imposed.

4. Before the Labour Court, the legality of the enquiry proceedings was not challenged. The Labour Court came to the conclusion that there was no sufficient evidence on the record to establish the guilt of the said workman and that no opportunity was given to cross-examine certain witnesses and that, therefore, it cannot be said that the misconduct was proved. The Labour Court, therefore, set aside the order of penalty and totally exonerated the concerned workman. The said order is challenged by the S.T. Corporation in this Special Civil Application.

5. It is required to be noted that in the departmental enquiry, the charge of misconduct is proved against the employee to the effect that he was negligent in driving the bus and because of his rash and negligent driving, one child lost its life. It is required to be noted that the legality of the departmental enquiry was not challenged before the Labour Court. It is also required to be noted that so far as the departmental proceedings are concerned, the same are not required to be equated with criminal proceedings. Strictly speaking, the provisions of the Evidence Act are not applicable to the departmental proceedings and on the basis of the available evidence, if it was found that the concerned workman was negligent, it could not have been said that

it was absolutely a case of no evidence so far as departmental proceedings are concerned. In the departmental proceedings, even on the basis of preponderance of probabilities also, the authority can come to a particular conclusion. The Labour Court has, therefore, clearly committed an error in re-appreciating the entire evidence in the disciplinary proceedings and in coming to the conclusion that the misconduct against the concerned employee was not proved looking to the evidence on record. In my view, the Labour Court has exceeded its jurisdiction in reaching the conclusion. It is not in dispute that the enquiry was properly held. Even the workman has also stated before the Labour Court that he is not challenging the legality and validity of the enquiry proceedings and it cannot be said that there was no evidence in reaching the conclusion that the concerned workman was negligent in driving the vehicle. The Order of the Labour Court is, therefore, absolutely unsustainable and deserves to be set aside. It is also required to be noted that the appellate authority of the Department has also taken a liberal view while modifying the order of penalty and the concerned driver was subjected to penalty of placing him in his original pay scale for two years, instead of placing him in the original pay scale for a period of three years, which was originally passed by the Disciplinary Authority. In that view of the matter, the order of penalty was also not required to be interfered with under Section 11A of the I.D. Act. Under the aforeaid circumstances, in my view, the Award of the Labour Court deserves to be set aside and the same is accordingly set aside. The effect of this order is that the penalty imposed on the concerned workman by the Appellate Authority shall stand.

The petition is accordingly allowed. Rule is accordingly made absolute, with no order as to costs.

6th September, 2001 (P.B.Majmudar, J.)

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(apj)